IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 12022 & 12020 of 2004

For Approval and Signature:

HONOURABLE MR.JUSTICE JAYANT PATEL

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUDHABEN KANUBHAI PRAJAPATI - Petitioner(s)

Versus

DISTRICT PANCHAYAT & 2 - Respondent(s)

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Appearance :

MR NK MAJMUDAR for Petitioner(s) : 1,
MR HS MUNSHAW for Respondent(s) : 1,
RULE SERVED BY DS for Respondent(s) : 2 - 3.
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CORAM : HONOURABLE MR.JUSTICE JAYANT PATEL

Date : 01/12/2005

COMMON ORAL JUDGMENT

1.As both the petitions are inter-connected and in both

the petitions more or less common facts are involved, common questions arise for consideration and, therefore, they are being considered by this common judgement.

2. The petitioner of Special Civil Application No.12020 of 2004 is a teacher who has been inflicted punishment in the departmental proceedings of withholding of one increment for the misconduct of having illicit relations with another lady, who is widow, and also the petitioner of Special Civil Application No.12022 of 2004 namely; Sudhaben K Prajapati. The allegation was not only of having illicit relation, but the charges proved are that the petitioner had lawfully married wife and without there being divorce with the previous wife, he has kept relation with another lady and two children are born out of the said relation.

3. So far as the petitioner of SCA No.12022 of 2004 is concerned, she was working as Vidhya Sahayak and the charges in the disciplinary proceeding inquiry were the same. The additional charge was that the petitioner procured the benefit in service as widow, though she had kept the marital relation with one Manibhai Keshavbhai Lad, who is the petitioner of SCA No.12020

of 2004 and two children are born out of the said relation.

4. There was also charge against both the petitioners that without obtaining permission of the Competent Authority the agreement for marriage is undertaken by both the petitioners.

5. Heard Mr.Majmudar, learned Counsel for the petitioners in both the petitions and Mr.Barot for Mr.Munshaw, learned Counsel for the District Panchayat.

6. It appears that on the following aspects, there is no dispute in both the petitions:

(a) Both the petitioners are Hindus.

(b) The petitioner of SCA No.12020 of 2004 had lawfully married wife alive at the time of birth of both the children and even prior that to. The said petitioner has preferred HMP No.148/1997 in the Court of Civil Judge (S.D.), Surat and no decision is given by any Competent Court for divorce. The name of lawfully wedded wife is Minaxiben V. Tailor.

(c) The petitioner of SCA No.12022 of 2004 had lawfully married with Prakashkumar Natubhai Lad on 18.6.1993 and the husband of the petitioiner expired. The petitioner applied for appointment as “Balaguru” in her capacity as widow and she was

appointed on 5.9.1997. Thereafter, the petitioner also applied as Vidhya Sahayak/Teacher and on 18.12.1998 and the petitioner was appointed as Vidhya Sahayak.

(d) The first child was born on 6.4.1998 and the second child was born on 30.2.2000 out of the relations by both the petitioners.

(e) The birth of the children and the relations were admitted even during the course of the departmental inquiry.

(f) The only defence was that the HMP petition is pending in the Court and no marriage is solemnised between both the petitioners, nor any contract of marriage was executed between both the petitioners. However, the pertinent aspect is that neither the relations, nor the birth of the children on account of the relations by both the petitioners are denied and they are admitted.

(g) On the same facts, so far as the petitioner of SCA No.12020 of 2004, the punishment imposed by the disciplinary authority is of withholding of only one increment though the finding was that the misconduct is proved. So far as the petitioner of SCA No.12022 of 2004 is concerned, the disciplinary authority namely District Primary

Education Officer, as per the order dated 5.7.2004 having found that the misconduct is proved has imposed penalty of dismissal from service.

It is under these circumstances both the petitioners have approached this Court by preferring this petition.

7. As such, in my view, the issues are covered by the decision of this Court in case of **"K.V.Bhundia v. State of Gujarat", reported in 2003(3) GCD, 2118 (Guj.)** wherein, while considering the question as to whether such a conduct on the part of a government servant, who is Hindu having illicit relation with another lady during the life time of lawfully wedded wife can be said as unbecoming of a public servant, this Court observed at para 7 as under:

> 7. Before I consider the submissions of Supehia on the question of examination of witness it is necessary to consider the alternative submission because Mr.Supehia has made strong efforts on the point that such an action can not amount to misconduct. It is true various conducts or norms which the public servant is required to observe while on duty may not be prescribed, but in my view for treating the action as unbecoming of a public servant the test would be whether it lowers down the image of a public servant in the society? If the charges are deemed as proved, the net effect is that the petitioner is having illicit relation with lady Nalini and a daughter child is born out of such relation. In my view, when it is admitted position that the petitioner is a Hindu, the law expects a Hindu male member to maintain marital relation with lawfully wedded wife. So far as the society at large is concerned having relation or keeping relation as kept or having sexual relation with another lady is treated as illicit relation in the society. Had it been the case of staying together without their being any allegation of illicit relation or without their being any allegation of birth to a child matter would have been different. In the present case, the allegation is of illicit relation with a lady during the life time of a lawfully wedded wife, further with the allegation that a child is borne out of that relation.

> In any view, the fact that the child is borne out of the relation of the petitioner with the lady-Nalini itself is sufficient to presume sexual relation and therefore the same is also sufficient to come to conclusion that the petitioner is having illicit relation with lady Nalini. In any event holding of a post as a public servant in a society would stand on a higher pedestal than that of a common man. When such action indulged by the common man is known as immorality in society, it would reduce the value or image with some disgrace so far as the public servant is concerned. Therefore, in my view, the contention of Mr.Supehia that even if the charges are deemed as proved, it can not be said to be a misconduct can not be accepted and hence rejected.

8.It may also be recorded that the matter is also covered by another decision of this Court in case of **"Bhikhudan A. Gadhavi v. Distt. Panchayat", reported in 2002(4) GCD, 83 (NOJ)(GUJ)**, wherein this Court had an occasion to consider the question of proportionality of the punishment in a case where it was proved that the Panchayat servant had illicit relation during the life time of lawfully wedded wife and begotten a child through her and this Court observed as under:

> *"The record would indicate that the petitioner has admitted he was living with Ms.Haribalaben, though his first marriage was subsisting and that she had given birth to his child. Though the inquiry established charge different from one originally framed, the petitioner having admitted the fact constituting such charge, the Inquiry Officer was justified in recording said finding on the basis of which the disciplinary authority*

has taken the action. Further, the petitioner was given an opportunity of defending himself against the charge which was different from the one originally framed and which stands established. The petitioner has not pleaded nor shown that any prejudice was caused to him by the finding recorded by the Inquiry Officer to the effect that his conduct was unbecoming of a Panchayat servant. This aspect has been dealt with in detail by the Gujarat Civil Services Tribunal, Gandhinagar in its judgement on internal pages 17 and 18, with which this Court fully agrees. In view of what is observed hereinabove, the Court is of the opinion that the finding recorded by the disciplinary authority to the effect that the conduct of the petitioner was unbecoming of a Panchayat servant, which is affirmed by the appellate authority, i.e. The District Development Officer and the Gujarat Civil Services Tribunal, Gandhinagar, is eminently just and hereby upheld."

9.It was further observed on the question of proportionality of the punishment as under:

"It was also noticed by the disciplinary authority

that the conduct of the petitioner was moral turpitude and exhibited wantonness on his part. Continuing such a person in service would not have enhanced the image of service, and would have sent wrong signal to other employees. Under the circumstances, it is difficult to come to the conclusion that removal of the petitioner from service not disqualifying for future employment is a harsh punishment, which is imposed by the disciplinary authority."

10.If the matter is examined in light of the aforesaid legal position, it appears that both the petitioners are in capacity as the teacher serving in the School. As observed earlier in case of **"K.V.Bhundia v. State of Gujarat"**(supra) for treating the action as unbecoming of a public servant or misconduct, the test would be whether it lowers down the image of the public servant in the society. The law expects the Hindu male member to maintain marital relations with lawfully wedded wife. So far as the society at large is concerned, having relations or keeping relation as kept or having relation with another lady is treated as illicit relation in the society. When the relation has given birth to the child such relations are deemed as proved.

11.The teachers in any filed are expected to maintain

standard of morality, which enhances the status of a teacher. In Hindu philosophy, teachers are termed as “Guru”. The students, more particularly at the primary level, who have yet to see the world by facing reality would see the teachers with expectation of high standard to learn in the life for future to come. It is also said that the teacher is second mother of a child. If a teacher, may be male or female, keeps any illicit relation with any person, it not only lowers down the image for the post which the government employee is holding, but it sends a very bad signal to the public at large and more particularly the parents of the students, who send their son or daughter for studying in the school and to educate, including high standards in life. It may be recorded that in the large number of schools, moral science is one of the subjects taught to the students for maintaining the standards of morality. If, those who educate the children of a tender age, themselves do not maintain morality, it not only lowers down the image of a teacher, but it rather ruines the standard at which the society expects the teacher to stand by.

12. Therefore, if the authority has taken the view of a serious misconduct attracting punishment for dismissal in case of the petitioner of SCA No.12022 of 2004, the

same can neither be said as unreasonable or arbitrary or disproportionate to the charge levelled against the said petitioner.

13.Mr.Majmudar, learned Counsel for the petitioners submitted that the imposition of punishment of dismissal of the petitioner of SCA No.12022 of 2004 is arbitrary in as much as though the misconduct is the same and both are partially found responsible in case of the petitioner of SCA No.12022 of 2004, the punishment imposed is of dismissal of service, whereas in case of the petitioner of SCA No.12020 of 2004 the punishment imposed is of withholding of one increment and, therefore, he attempted to submit that in case of the petitioner in SCA No.12022 of 2004, instead of dismissal from the service, the disciplinary authority ought to have imposed punishment of withholding of one increment i.e. At par with the petitioner of SCA No.12020 of 2004.

14.If the said contention is examined, in view of the observations made hereinabove, it does appear that the misconduct is such which would attract the major penalty and if the authority has imposed the penalty of dismissal from service, such by no stretch of imagination can be said as unreasonable or wholly disproportionate to the charge proved. As a matter of

fact, if the laws laid down by this Court are taken into considered, keeping with the factual aspects in the present case that the petitioner of SCA No.12020 of 2004 is also a teacher, the order for imposition of punishment for withholding of one increment is wholly disproportionate to the lesser extent in as much as it was a case for imposition of major penalty even for the petitioner of SCA No.12020 of 2004. Therefore, if the authority has arbitrarily imposed a nominal penalty as against the major misconduct proved, it would be a case for interference to that extent. Since for enhancement of the punishment the principles of natural justice are required to be followed, it would be for the disciplinary authority to take into consideration the observations made by this Court in the present judgement and to take action in accordance with law qua the punishment imposed upon the petitioner of SCA No.12020 of 2004. As and when such action is initiated the petitioner of SCA No.12020 of 2004 may raise all contentions as may be available in law. However, in any case, by taking reliance to the arbitrary exercise of the power by the disciplinary authority of imposing nominal punishment in a major misconduct, it cannot be said that the punishment imposed upon the petitioner of SCA No.12022 of 2004 of dismissal from service is

arbitrary or unreasonable.

15. Mr.Majmudar, learned Counsel for the petitioner relied upon the decision of the Apex Court in case of **"Harminder Singh v. State of Punjab and Anr.", reported in AIR 1984 SC, 758** for contending that all the employees are required to be treated equally if they are similarly situated and in a case where the misconduct is leniently viewed or condoned, the same treatment deserves to be given to the other employee also. Such principles, if applied in the present case, would on the contrary, in view of the aforesaid observations and conclusions recorded, calls for initiation of proceedings for enhancing the punishment in case of the petitioner of SCA No.12020 of 2004, since imposition of lenient penalty is ex-facie contrary to the law laid down by this Court in the above referred judgement. Therefore, the said decision is of no help to the learned Counsel appearing for the petitioner of SCA No.12022 of 2004.

16. In view of the above, Special Civil Application No.12022 of 2004 is dismissed. Rule discharged. Considering the facts and circumstances, there shall be no order as to costs.

17. So far as SCA No.12020 of 2004 is concerned, in view of the aforesaid observations and the directions, it

would be for the authority to initiate the proceedings in accordance with law for enhancement of the punishment and to pass the order after giving opportunity of hearing to the petitioner and in accordance with law. The aforesaid exercise shall be completed within a period of three months from the date of receipt of order of this Court. Hence, ordered accordingly.

18. Subject to the aforesaid observations and directions, SCA No.12020 of 2004 shall stand disposed of accordingly. Rule partly made absolute. Considering the facts and circumstances, there shall be no order as to costs.

1.12.2005 **(Jayant Patel, J.)**

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